

KEYWORD: Financial

DIGEST: Applicant failed to mitigate financial security concerns arising from accumulated delinquent debts totaling approximately \$13,000 despite being employed in a responsible position since 2003. She has paid, settled, or successfully disputed only \$350 of the debts, and has no viable plan to do so with the other debts. While her intent to resolve them is strong, her actions and ability to do so to obtain a favorable trustworthiness determination is in doubt based on the record. Clearance is denied.

CASENO: 06-18123.h1

DATE: 05/31/2007

DATE: May 31, 2007

In Re:	)	
	)	
	)	
-----	)	ADP Case No. 06-18123
SSN: -----	)	
	)	
Applicant for ADP I/II/III Position	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_Applicant failed to mitigate financial security concerns arising from accumulated delinquent debts totaling approximately \$13,000 despite being employed in a responsible position since 2003. She has paid, settled, or successfully disputed only \$350 of the debts, and has no viable plan to do so with the other debts. While her intent to resolve them is strong, her actions and ability to do so to obtain a favorable trustworthiness determination is in doubt based on the record. Clearance is denied.

### **STATEMENT OF CASE**

\_\_\_\_\_On November 30, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a trustworthiness determination for an ADP clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether such a clearance should be granted, continued, denied, or revoked.

On December 23, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on February 12, 2007. A notice of hearing was issued on March 28, 2007, for a hearing on April 16, 2007, and held that day. The government offered six exhibits and Applicant offered fourteen into evidence. All were accepted. The record was left open until May 15, 2007 for additional information to be submitted but none was received. The transcript was received on April 24, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_Applicant admitted all but four of the 23 allegations relating to delinquent debts with explanatory information. She appended several documents to her answer which were considered as evidence. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 42-year-old customer service representative for a defense contractor health provider and has held this position since September 2003. She filed a public trust position application (SF 85P) for a trustworthiness determination on June 13, 2005. Before her present employment she had periods of unemployment and under-employment causing her to accumulate a large number of delinquent debts totaling approximately \$13,000.

An analysis of her delinquent debts alleged in the SOR based on the documentary evidence and her testimony shows as follows for those alleged debts about which Applicant testified or had information:

1. Par. 1.a.: Furniture purchase charged off in 2003 for \$3,644. She still has the furniture and

has not been in contact with the creditor.

2. Par. 1.b. and c.: Two credit cards from same company each over \$2,000 and charged off as unpaid in 2003.

3. Par. 1.d.: Credit card debt of \$1562 charged off in 2004. Applicant contacted creditor in 2006 and was offered a settlement to be made in three payments. No action taken to resolve the debt. Possibly same account as Par. 1.v. for \$1,922, but not proven.

4. Par. 1.e.: Credit card debt for \$726 charged off in 2004 and settled with payment in December 2006 (Exh. K).

5. Par. 1.f.: Telephone bill of \$101. Same as 1.t. Paid in full.

6. Par. 1.l.: Medical bill for \$171. Same as 1.m. but no action taken to resolve.

7. Par. 1.o.: Telephone bill of \$160 paid in full in July 2005 with new phone bill.

8. Par. 1.q.: Electric power bill \$55. Applicant disputed the bill and it was resolved in Applicant's favor.

9. Par. 1.s.: Satellite TV account balance outstanding from her last move of residence. Unpaid and no contact with company.

10. Par. 1.w.: Subject matter unknown and in dispute for \$1,826.

Thus, there are a number of the alleged delinquent debts to which Applicant admitted but had neither information about them, and could show no effort to contact creditors and resolve them.

Applicant has a responsible position working with medical information for military personnel and is highly regarded by her employer as stated in annual reviews and a letter from her supervisor (Exhs. A-D). Her work involves telephone calls to military personnel and their families regarding claims for dental services against insurance companies and health service providers. She takes great pride in her work. Her colleagues and friends speak highly of her character and integrity (Exhs. E-G).

Applicant is a single parent of two sons ages 23 and 19 and a daughter age 8. Her first husband served ten years in the Air Force serving abroad for part of the time. While overseas Applicant was employed on an Air Force base and was well regarded by her supervisors (Exhs. M and N) They were divorced in October 1998. She married a second time and was divorced. In June 2005 she married for a third time. She received child support payments for her children for several years and is still scheduled to receive support for her daughter (Exh. H). However, the payments from the father are behind almost \$2,000 and scheduled monthly payments of \$29 are irregular. He currently works as a prison security guard.

\_\_\_\_\_ Applicant's older son is employed and is self-sufficient. He also is a volunteer firefighter and desires to join the Air Force to become a fourth generation service member. Her second son is still

in school and lives with Applicant's sister in another town to finish his high school in the same town where the family lived for several years. Applicant provides some funds for him and pays his auto insurance on a car she purchased for him. Her daughter lives with Applicant and her husband. She is completely responsible for her daughter except for the child support payments.

\_\_\_\_\_Applicant initiated a credit counseling program in March 2006 (Exh. I) and made payments to the counseling company for four months. She then discovered that no funds were being disbursed to her creditors so she canceled the program and was refunded her money. She has done nothing further in credit counseling since that time. She candidly admits that she is a poor money manager and that her credit is a "wreck". She basically breaks even every month, but often has emergencies for health or auto repairs for the family which adds to her debts. She has recently opened a 401k account with her employer (Exh. L). In January 2007 she paid one account in full for over \$700 and a second account partially for \$250 (Exhs. J and K). These were not accounts alleged in the SOR.

At the time she was interviewed by an investigator in this matter in March 2006, Applicant indicated her husband's monthly income was \$4,000. They had been married less than a year. He no longer has the same job and now has been unemployed for several months. He is hoping to find new work but has physical and emotional problems that may make it difficult for him to obtain and keep employment. He filed Chapter 13 bankruptcy before their marriage and pays \$571 to the bankruptcy court to resolve the bankruptcy. There is a possibility that she might become liable for the payments if he cannot make them. Since their marriage less than two years ago they have been separated for five months but they are now living together.

## POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 12968, *Access to Classified Information*, § 3.1(b) (August 4, 1995), the President provided that eligibility for access to classified information shall be granted only to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information."

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." DoD 5200.2-R,

Appendix 8. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. *Id.* Also, an administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *Id.* The adjudicative guidelines (AG), as revised December 29, 2005, and implemented September 1, 2006, apply to ADP trustworthiness determinations.

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable access determination may be made. DoD 5200.2-R, ¶ C8.2.1. Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive, ¶ E2.2.2.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant’s 23 delinquent debts totaling approximately \$13,000 as alleged in the SOR prompted the allegation of security concern under Guideline F since an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds (AG ¶ 18). Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations (AG ¶ 19 c), and evidence of inability or unwillingness to satisfy debts (AG ¶ 19 a).

Mitigating Conditions (MC) might include the fact that the conditions that resulted in the behavior were largely beyond the person’s control and the individual acted responsibly under the circumstances (AG ¶ 20 b), and the person has initiated a good faith effort to repay overdue creditors or otherwise resolve debts (AG ¶ 20 d). There is some evidence that the debts resulted from conditions beyond Applicant’s control but she has admitted to being a poor money manager and the

evidence indicates she has not acted responsibly while employed and married to a husband who was employed. Her effort to begin credit counseling was praiseworthy but she dropped the program.

While Applicant has made some contact with a few of the creditors, she has not done so with most of them. She has paid three of the smaller delinquent debts totaling \$350 alleged on the SOR and two more not on the SOR, but that is not a sufficient number considering that there still 19 outstanding or for a total amount sufficient to justify application of the mitigating conditions.

In all adjudications, the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant is a proud person who is a hard-working responsible parent doing a good job for her employer. Her delinquent debts accumulated largely as a result of a checkered history of employment at low wages and lack of employment for periods of time resulting in a loss of control of her finances. She is anxious to provide for her children despite limited resources. She has significant responsibilities and now has a job where she is a valued employee. However, her total income does not appear to be sufficient to resolve all her debts in a timely way even with the will to do so. Thus, she has the right intent but probably lacks the ability to resolve the issues that preclude her from receiving a favorable grant at this time.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I deny the grant of a trustworthiness determination.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

<u>Paragraph 1. Guideline F:</u>	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant

_____	Subparagraph 1.m.:	For Applicant
_____	Subparagraph 1.n.:	Against Applicant
_____	Subparagraph 1.o.:	For Applicant
_____	Subparagraph 1.p.:	Against Applicant
_____	Subparagraph 1.q.:	For Applicant
_____	Subparagraph 1.r.:	Against Applicant
_____	Subparagraph 1.s.:	Against Applicant
_____	Subparagraph 1.t.:	Against Applicant
_____	Subparagraph 1.u.:	Against Applicant
_____	Subparagraph 1.v.:	For Applicant
_____	Subparagraph 1.w.:	Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest at this time to grant a favorable trustworthy determination to Applicant. Clearance is denied.

Charles D. Ablard  
Administrative Judge